

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

GAREY E. LINDSAY, Regional Director	:	Case No. 3:17-cv-126
of the Ninth Region of the National	:	
Labor Relations Board, for and on Behalf	:	Judge Thomas M. Rose
of the National Labor Relations Board,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	
MIKE-SELL'S POTATO CHIP	:	
COMPANY,	:	
	:	
Respondent.	:	

**ENTRY AND ORDER DENYING PETITIONER'S MOTION TO
ADJUDICATE BASED UPON AFFIDAVIT EVIDENCE (DOC. 10)**

This case is before the Court on the Motion to Adjudicate Based Upon Affidavit Evidence (Doc. 10) filed by Petitioner Garey E. Lindsay, Regional Director of the Ninth Region of the National Labor Relations Board, on behalf of the National Labor Relations Board (“Petitioner”). Petitioner seeks a preliminary injunction against Respondent Mike-Sell’s Potato Chip Company (“Respondent”) pursuant to Section 10(j) of the National Labor Relations Act (the “Act”) pending the final disposition of proceedings before the National Labor Relations Board. (Doc. 1) Petitioner originally sought an expedited briefing schedule and hearing on its Petition, which the Court granted. (Doc. 2.) After Respondent filed its memorandum in opposition to the Petition and one week before the scheduled hearing date, Petitioner moved to adjudicate this matter based upon affidavit evidence only. (Doc. 10.) Petitioner argues that a hearing is not required because it must show only that there is “reasonable cause” to believe that Respondent has violated the Act, which can be shown using affidavit evidence alone.

Respondent objects to the Petitioner's motion because it prepared its memorandum in opposition based on the assumption that it could present argument and additional testimony at the scheduled hearing. (Doc. 14.) Respondent asserts that the "full panoply of complex issues and multiple competing interests cannot be effectively communicated through affidavits alone, which provide no opportunity for the full development and cross examination of testimony." (*Id.* at 2.)

The Court is not convinced that live testimony is required because affidavits are no substitute for live testimony. The parties could effectively present witness testimony through affidavits alone, provided that they are given notice that the Court intends to rule on affidavit evidence alone. In this case, however, the parties were not provided such notice and therefore Respondent's objection to the Petitioner's motion has merit. Petitioner requested an expedited briefing schedule and hearing before the Court. It cannot complain now that it has gotten what it asked for. The Motion to Adjudicate Based Upon Affidavit Evidence (Doc. 10) is therefore **DENIED**. The Court will proceed with the hearing on the Petition on May 12, 2017 at 9:00 AM.

DONE and ORDERED in Dayton, Ohio, this Wednesday, May 10, 2017.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE